

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

WALL CARDIOVASCULAR
TECHNOLOGIES, LLC,

Plaintiff,

V.

ABBOTT LABORATORIES AND
ABBOTT CARDIOVASCULAR SYSTEMS,
INC.,

Defendants.

CIVIL ACTION NO. 2:08-cv-289-TJW

ORDER

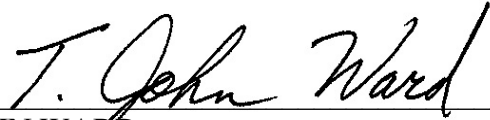
Before the Court is Defendants' request for permission to file a motion for summary judgment of non-infringement on U.S. Patent No. 6,974,475 (Dkt. No. 45.) Having considered the parties' arguments and the applicable law, the Court DENIES Defendants' request for leave.

Defendants argue that the only asserted independent claim is a method claim that is not performed solely by Abbott and thus Plaintiff must prove joint infringement by both Abbott and physicians using Abbott's products. Defendants argue that summary judgment of non-infringement is appropriate because Plaintiff cannot prove joint infringement. Plaintiff opposes this request primarily on the basis that it is premature. The Court agrees with Plaintiff. Discovery in this case will not end until August 2011. Plaintiff has alleged that no depositions have been taken and Plaintiff has tendered no interrogatories or requests for admission. The Court finds that while summary judgment briefing may be appropriate on this issue at a later date, summary judgment briefing on this issue at this time is premature. Thus, the Court

DENIES Defendants' request to file a motion for summary judgment of non-infringement as being premature. Discovery closes in August 2011, until which time the parties are free to gather evidence that supports their positions on this issue. Defendants may again request leave of the Court to file a motion for summary judgment on this issue once discovery is completed on this issue for both parties.

IT IS SO ORDERED.

SIGNED this 7th day of December, 2009.

A handwritten signature in black ink, reading "T. John Ward", is written over a horizontal line.

T. JOHN WARD
UNITED STATES DISTRICT JUDGE